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Amendment
Attorney Docket No. S63.2N-7311-US02

Remarks

This Amendment is in response to the Office Action dated June 9, 2004 in which the Examiner rejected claims 1, 30, and 33 – 38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,989,280 (“Euteneuer”) in view of U.S. Patent Number 5,899,935 (“Ding”). The Examiner further rejected claims 31, 32, and 39 – 44 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,403,341 (“Solar”) in view of Ding.

The following paragraphs are presented in the same order and with paragraph headings which correspond to the Office Action.

Claim Rejections – 35 U.S.C. 103(a)

In the Office Action, claims 1, 30, and 33 – 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Euteneuer in view of Ding. These rejections are overcome.

Applicant has amended claim 1. Amended claim 1 requires “at least one stent retaining segment interwoven about the stent.” (Emphasis added). Applicant respectfully asserts that none of the cited references disclose retaining segments that are interwoven about the stent, as claimed in independent claim 1. Combining the teachings of Euteneuer with Ding does nothing to overcome the failure of Euteneuer alone to teach the interwoven retaining segment as in instant claim 1. The rejection as to claim 1 is respectfully overcome.

Independent claim 30 recites “a pattern of perforations in the tubular section selected to modify the expansion characteristics of the section.” (Emphasis added). Euteneuer, however, discloses a tubular section of material with perforations provided to control the rate of dissolution of the tubular section. (Col. 7, lines 52-55)(Emphasis added). There is no teaching, suggestion, or motivation in either Euteneuer or Ding regarding “a pattern of perforations in the tubular section selected to modify the expansion characteristics of the section,” as recited in independent claim 30. Although Euteneuer discloses that dissolve band 60 can be made of a swelling material (col. 8, lines 14-16), it is silent with respect to using perforations to modify expansion characteristics, as in instant claim 30. Combining Euteneuer with Ding does nothing to overcome the failure of Euteneuer to teach or suggest using a pattern of perforations to modify

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expansion characteristics. The rejection as to claim 30 is respectfully traversed.

Claims 33 – 38 depend from independent claims 1 and 30. “Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.” *Hartness Int’l, Inc. v. Simplimatic Eng’g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987), *In re Abele*, 684 F.2d 902, 910, 214 USPQ 682, 689 (CCPA 1982); see also *In re Sernaker*, 702 F.2d 989, 991, 217 USQP 1, 3, (Fed. Cir 1983). For the reasons presented above, independent claims 1 and 30 are nonobvious under section 103. Therefore, claims 33 – 38 are nonobvious.

In the Office Action, claims 31, 32, and 39 – 44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Solar in view of Ding.

In regards to claims 31 and 32, Applicant respectfully submits that there is no teaching, suggestion, or motivation presented in either Solar or Ding, either explicitly or implicitly, for combining the two references. (*In re Clinton*, 527 F.2d 1226, 188 USPQ 265 (CCPA 1976)). Furthermore, there is no teaching, suggestion, or motivation in either Solar or Ding to use a tubular section “wherein a pattern of perforations provided in the tubular section is selected to modify the expansion characteristics of the section and thereby constrain the expansion of the underlying stent” as recited in independent claims 31 and 32. Solar discloses the use of perforations “such that the retaining sheaths 40 will tear away from the ends of the stent 10...” (Solar, col. 8, lines 22-24). Rather than being used to modify the expansion characteristics of the tubular section as instant claims 31 and 32, the perforations of Solar are merely “adapted to tear under pressure as the stent 10 is radially expanded.” (*Id.* at lines 41-43). Because the material surrounding the perforations of Solar tear under pressure and expansion inherently increases pressure on the material surrounding the perforations, the perforations of Solar are precluded from being used to modify expansion characteristics. Combining the teachings of Solar with Ding does nothing to overcome the failure of Solar to teach the perforations used to modify the expansion characteristics of the tubular section, as claimed in independent claims 31 and 32. Therefore, Applicant respectfully asserts that the rejections are improper and requests that the Examiner remove the rejections of claims 31 and 32 pursuant to 35 U.S.C. § 103.

Claims 39 – 44 depend from independent claims 31 and 32. “Dependent claims

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are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987), *In re Abele*, 684 F.2d 902, 910, 214 USPQ 682, 689 (CCPA 1982); see also *In re Sernaker*, 702 F.2d 989, 991, 217 USQP 1, 3, (Fed. Cir 1983). For the reasons presented above, independent claims 31 and 32 are nonobvious under 35 U.S.C. § 103. Therefore, claims 39 – 44 are nonobvious.

Conclusion

Applicant believes that claims 1 and 30 – 44 are allowable and respectfully requests that the Examiner reconsider and withdraw the rejections to claims 1 and 30 – 44 which Applicant believes puts the Application in condition for allowance. Favorable consideration and prompt action to that effect are sincerely requested.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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Date: July 7, 2004

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